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In the Supreme Court of the United States

OCTOBER TERM, 1962.

No. 94.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,
Petitioners,

vs.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
Respondent.

PETITIONERS' BRIEF ON THE MERITS.

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THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-3947

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OPINIONS BELOW.

The memorandum opinion of the District Court entitled "Order" is reproduced at page 1 of the Appendix attached to this brief. The District Court's Findings of Fact and Conclusions of Law and Judgment are reported in 190 F. Supp. 829.

The opinion of the United States Court of Appeals for the Sixth Circuit is reported in 297 F. 2d 608.

JURISDICTION.

The judgment of the United States Court of Appeals for the Sixth Circuit was entered December 18, 1961. A Petition for Rehearing, and for Clarification and Extension of the Opinion, was filed December 26, 1961, and denied by an order made and entered January 17, 1962.

The jurisdiction of this Court rests upon 28 U. S. C. Sec. 1254(1).

STATUTES INVOLVED.

The statutes involved are the Railway Labor Act (45 U. S. C. Sec. 151, *et seq.*), the pertinent portions of which are printed at page 69, *et seq.*, in the Appendix attached to this brief; and the Norris-LaGuardia Act (29 U. S. C. Sec. 101, *et seq.*), the pertinent portions of which are printed at page 80, *et seq.*, of the Appendix attached to this brief.

QUESTIONS PRESENTED.

1. Does the Railway Labor Act, in particular the provision regarding judicial enforcement of National Railroad Adjustment Board awards, contained in Section 3, First (p) (45 U. S. C. Sec. 153, First (p)), deprive railroad employees of their common law right to strike in the course of attempting to persuade management to settle a dispute after the dispute has been made the subject of an award by the Board in favor of an employee or employees and the award has not been made effective by the railroad?

2. In the circumstances stated in question No. 1, is the enforcement suit authorized by Section 3, First (p), the only remedy available to the employees, or may the employees resort to a strike in an effort to induce the employer to accede to their contentions in the matter in dispute?

STATEMENT OF THE CASE.

The petitioners, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brakemen, and Brotherhood of Railroad Trainmen, are the duly authorized representatives, for the purposes of the Railway Labor Act, of the crafts of engineers, firemen, conductors and trainmen, respectively, employed on the Louisville and Nashville Railroad (hereinafter sometimes referred to as "L & N"). This litigation grew out of the following circumstances:

A fireman named B. G. Humphries employed by L & N was discharged on March 31, 1956 (R. 37a). The BLF&E general chairman on the L & N disputed the propriety of the discharge and asked L & N to restore Humphries to his job. Negotiations followed and were conducted over a period of several months, but L & N would not agree to return Humphries to employment. Because an agreement could not be reached, the employees comprising the firemen's craft prepared to engage in a strike, but before the strike could be initiated L & N submitted the dispute to the First Division of the National Railroad Adjustment Board. This submission was made June 13, 1957 (R. 37a). The statement of the BLF&E's claim on behalf of Fireman Humphries as contained in the L & N submission reads as follows:

> "Request that Fireman B. G. Humphries, Louisville Main Stem First Division, be reinstated to service with former seniority unimpaired and paid for all time lost. Article 31." (R. 91b)

The submission halted the employees' determination to strike.

Article 31, referred to in the statement of claim on behalf of Humphries, is a rule in the firemen's collective

agreement to the effect that a fireman will not be discharged or disciplined without just cause, and that notice of the carrier's charge will be given the employee and an investigation held. Paragraph (f) of Article 31 provides as follows:

> "If the discipline administered is not sustained, it will be cancelled and the party in question will be paid for any time lost by him resulting from the investigation or action taken." (R. 137a)

Article 31 has been a part of the firemen's collective agreement on the L & N since L & N and the BLF&E entered into their first agreement on or about August 1, 1919 (R. 88a).

L & N's submission to the Adjustment Board was confined to one issue, to wit, whether Humphries' discharge was consistent with Article 31 (R. 91b). The submission did not discuss the amount of lost wages Humphries would be entitled to receive under Article 31 if the Adjustment Board sustained the claim on behalf of Humphries. The response filed on behalf of Humphries to the L & N submission did not go beyond the issue raised by the L & N submission. On May 14, 1958, the Adjustment Board issued Award No. 18,720 pertaining to the Humphries dispute. The Board's award concluded as follows:

> "Claim sustained with pay for time lost as the rule is construed on the property."

L & N restored Humphries to his employment promptly enough. But L & N advised the BLF&E's general chairman that it would pay the money portion of the award only if Humphries would submit a record of such monies as he may have earned from other employers while he was held out of employment by L & N and such earn-

ings were deducted from the total wages he would have earned from L & N but for the discharge (R. 38a-39a).

In the course of subsequent correspondence and conferences between the parties L & N adhered to the position that it had the right under Article 31 (f), as "construed on the property," to reduce its obligation to Humphries by the amount of his outside earnings. The BLF&E's general chairman, on the other hand, took the position that deducting outside earnings in settling the Humphries award was not consistent with Article 31 (f) and that L & N had never previously complied with an Adjustment Board award in favor of a fireman by deducting outside earnings (R. 39a).

The collective agreements in effect between L & N and the BLE, the ORC&B, and the BRT, each contains a rule substantially similar to Article 31 (f) of the firemen's agreement. In the course of conferences, L & N advised the BLF&E general chairman that it had never considered the discipline rules between it and its various crafts of employees "as prohibiting deduction of outside earnings." This announcement brought the BLE, the ORC&B, and BRT into the dispute (R. 40a-41a). The general chairmen representing these unions joined the BLF&E's general chairman in conferences with L & N officers and the chairmen insisted that outside earnings had never, to their knowledge, been deducted by L & N when paying awards rendered by the First Division in favor of employees belonging to any of the four crafts, and that L & N's announced intention to henceforth deduct outside earnings was, in effect, an attempt to unilaterally and unlawfully change the terms of the agreements between L & N and the respective unions. In a final conference held on July 30, 1958, attended by the four general chairmen and vice

presidents of the four unions, L & N officers stated they would adhere to their position and in the future L & N would deduct outside earnings in the settlement of Adjustment Board awards rendered in favor of employees within the crafts represented by the four general chairmen. (R. 41a-42a).

Being unable to reach agreement with management, the four general chairmen proceeded with preparations to take a strike vote among the members of the four crafts (R. 42a), but before strike plans could be put into effect L & N, on September 23, 1958, filed with the First Division of the Adjustment Board a submission entitled "First Division Award 18,720 Request for Interpretation." (R. 43a).

L & N requested the First Division to interpret the Award inasmuch as the BLF&E disputed L & N's contention that Rule 31 is interpreted on the property as permitting deduction of outside earnings. The First Division denied L & N's request. The First Division stated that the issue presented by the request for interpretation had not been included in L & N's original submission for determination and, of course, the submission contained no facts and supporting data bearing upon the issue. The rejection concluded with the explanation:

> "* * * we may not now determine a new issue under the guise of an interpretation of the issue formerly decided." (R. 68a)

Another conference with management was requested by the general chairmen and held on January 23, 1959 (R. 45a). The general chairmen were accompanied at the conference by the four unions' vice presidents. No progress toward settlement of the dispute was achieved. On the same date, to wit, January 23, 1959, L & N made a new

submission to the Adjustment Board, consisting of the dispute regarding the interpretation of Article 31 (f) (R. 47a). The statement of the claim in the third submission reads as follows:

> "Claim of Fireman B. G. Humphries for the wages he lost as fireman from March 31, 1956, to May 29, 1958, without deduction of wages he earned in outside employment during that period of time." (R. 69a)

The general chairmen, being of the opinion that the third submission was an act of bad faith, its purpose being to keep the dispute before the Adjustment Board and thereby prevent the employees from engaging in a strike, resolved to proceed with the strike that had twice been cancelled. The strike was called to begin February 13, 1959 (R. 46a). On February 12, 1959, the instant suit was begun by L & N and a temporary restraining order forbidding the employees to leave their employment was issued by the United States District Court for the Western District of Kentucky (R. 21b). The principal ground advanced in the complaint in support of the prayer for injunctive relief was that the dispute over which the employees proposed to strike was then pending before the Adjustment Board (R. 10a-11a).

The third submission to the Adjustment Board was dismissed by the Board on December 9, 1959. The basis of the Board's action was stated in its Award No. 19363 as follows:

> "The submission in Docket 34 752 (Award 18720) did not present and argue the question (deduction or no deduction) regarding the proper interpretation of Rule 31(f) of the firemen's agreement, although the question could have been included in that submission because such question (if extant) is inherent in Hum-

phries' claim for reinstatement. The First Division subsequently declined a request by petitioning carrier that it interpret Award 18 720 for the purpose of determining whether outside earnings should be deducted from the pay due to Humphries, simply because the schedule rule in its application on this subject was not considered by this Division in Award 18 720. Accordingly, this Division may not now, pursuant to a new submission, interpret the schedule rule in its application on this subject, because to do so would clearly violate the rule of this Division against permitting the piece-meal submission of disputes. The matter must be judged *res judicata*. The petitioning carrier had the opportunity of submitting the dispute involving Humphries' claim to reinstatement in all of its aspects, and its present attempted submission of one phase of that dispute must accordingly be dismissed.

Award: Case dismissed." (R. 71a-72a)

On December 12, 1959, defendants in the District Court filed a motion to dissolve the temporary injunction (R. 28a). On December 23, 1959, L & N moved to amend its complaint. The amendment was, in substance, that defendants should be permanently enjoined from carrying out their threat to strike for the reason that the judicial proceedings authorized by 45 U. S. C. Sec. 153, First (p), (Section 3, First (p), of the Railway Labor Act) is an exclusive method by which Adjustment Board awards may be enforced, and the strike which L & N employees threatened to engage in based upon the Humphries dispute would therefore violate the Railway Labor Act (R. 30a-33a).

Proof was offered and heard on these motions. The motion to dissolve the temporary injunction was overruled, and an order making the preliminary injunction permanent was entered December 20, 1960. Findings of

Fact and Conclusions of Law were submitted by plaintiff and signed by the District Court on January 18, 1961 (134a-153a). Judgment was entered of record January 18, 1961.

Appeal was taken from said judgment by the petitioners, and on December 18, 1961, an opinion was handed down by the United States Court of Appeals for the Sixth Circuit (R. 310-311), and judgment was entered on the same date affirming the judgment rendered by the District Court.

A Petition for Rehearing, and for Clarification and Extension of the Opinion, was filed by these petitioners on December 26, 1961 (R. 312). This petition was denied January 17, 1962 (R. 316).

In affirming, in a two-page opinion, the judgment of the District Court, the Court of Appeals stated that the dispute between the parties is a "minor dispute" and, the Court continued, "we think the United States Courts have jurisdiction and power to vindicate the processes of the Railway Labor Act," citing *Bro of Railroad Trainmen v. Chicago River and I. R. Co.*, 353 U. S. 30 (1957). The Court concluded its decision by saying that it concurred in District Judge Brook's "well-reasoned conclusions of law." (R. 311)

SUMMARY OF THE ARGUMENT.

The decisions rendered by the courts below, if they become the established law, are bound to have a profound and deleterious effect on employer and employee relations in the railway industry.

These decisions pertain to grievance procedure in the area of so-called "minor disputes" in the railway industry. This area of "minor disputes" can readily become an area

of major disturbances in the railway industry, because the "minor disputes" of the railway industry consist of those innumerable disagreements which develop from the daily business of operating some 120 major railroad systems, involving the daily services of approximately 185,000 engine- and train-service employees, and the continuous process of interpreting and applying the employment rules contained in hundreds of collective agreements, plus the inevitable necessity of disciplining certain employees and discharging others.

Since the inception of the current Federal labor policy, which began with the enactment of the original Railway Labor Act in 1926, the primary method of dissipating this multitude of individual grievances in a manner reasonably acceptable to both employers and employees has been the collective bargaining process. And the prime ingredient in the collective bargaining process which persuades employees to moderate their opinions and demands, and which influences employers to refrain from the arbitrary exercise of their authority, is the power which each party knows the other possesses to inflict economic injury upon himself out of all proportion to the gain to be derived from refusing to adjust and compromise differences.

Performing a role purely supplementary to the collective bargaining process, are the adjudicatory services of the National Railroad Adjustment Board. These services are invoked by employees relatively infrequently as compared with the countless grievances that are resolved by the collective bargaining process. And on far rarer occasions there is resort by employees to the judicial proceedings made available by Section 3, First (p), of the Railway Labor Act, in the hope of compelling carriers to make effective Adjustment Board awards rendered in favor of employees. Our research of reported cases shows

a total of 38 such suits to have been instituted between 1934 and the present.

The decisions rendered by the courts below proscribe the use of economic weapons by railway employees as a part of the collective bargaining process in negotiating the settlement of employees' grievances. The lower courts held that after a dispute has been decided by the Adjustment Board in favor of employees and the carrier fails to make the award effective, the employees are forbidden by the Railway Labor Act to return to the collective bargaining process in an effort to persuade the carrier to settle the grievance on satisfactory terms. Because Congress made available the judicial enforcement procedure under Section 3, First (p), of the Railway Labor Act, the courts below held, the Congress must have intended to prohibit attempts by employees to persuade carriers, accompanied by the use of economic weapons, to satisfy the grievance embodied in the award.

The use of, or threat to use, economic force is an integral part of the collective bargaining process. Without economic forces to use against the opponent, a participant in the collective bargaining process is like an athlete drained of his strength. He can ask, but he cannot persuade. The collective bargaining process can no longer be the means of disposing of the vast majority of employees' grievances in the railway industry.

A threat by railway employees to use economic weapons to persuade carriers to settle grievances during negotiations *prior* to the time that disputes may be submitted to the Adjustment Board is only idle talk, since the carrier can submit a dispute to the Adjustment Board before the strike threat can be made effective, and the threat cannot thereafter be carried out. And now, because of the decisions by the lower courts, the economic strength

possessed by railway employees has been completely neutralized in the field of "minor disputes," and this primary incentive, which has until now prompted carriers to settle grievances, ceases to exist.

Obviously, if the decisions rendered below stand, they will have a paralyzing effect on the collective bargaining process throughout the whole field of "minor disputes" in the railway industry. This is tantamount to saying that there will be a frustration of the goal of the Federal labor policy in this area of employer-and employee relations.

Aside from the fact that the National Railroad Adjustment Board cannot by any stretch of the imagination cope with the volume of grievances that will henceforth remain undisposed of because of the non-existence of an effective collective bargaining process, the Adjustment Board process is not equal to the task of resolving the "minor disputes" of the railway industry because the Board's process and its decisions lack the efficacy of a true compulsory arbitration process, save for the one feature that one party to a dispute may submit the dispute to the Board without consent by the other party. The Board's awards do not alter the legal rights of the parties when a carrier elects not to make the award effective.

The so-called enforcement procedure authorized by Section 3, First (p), of the Railway Labor Act simply represents a requirement that the employee must convince, for the second time, a government-established tribunal that his grievance is meritorious. The language of Section 3, First (p), makes clear, and the interpretations of this language to date by the Federal district courts and courts of appeals are uniformly to the same effect, that a court may not enforce an award unless it contains the essentials of a cause of action, and that the courts have the right and the duty to supplant the findings contained in

the award if the courts determine that the Board's findings are not consistent with the evidence produced by the parties at the trial before the court.

In holding that the Railway Labor Act forbids the use by railway employees of the right to use their economic strength in seeking settlement of employees' grievances, and that the only settlement process now capable of functioning in the field of "minor disputes" in the railway industry is the process of the National Railroad Adjustment Board and the so-called enforcement procedure authorized by Section 3, First (p), of the Railway Labor Act, the decisions rendered by the courts below are in conflict with the legislative history of the 1926 Railway Labor Act and of the 1934 amendments to that Act. This history provides not so much as a vestige of support for the conclusion that the sponsors of those laws, and the members of Congress who approved those laws, understood that the right of railway employees to engage in strikes as a part of their collective bargaining efforts was being taken from them, and was being replaced by the Adjustment Board process and the opportunity to seek judicial enforcement of Adjustment Board awards.

The decisions rendered by the courts below simply replace the Federal labor policy, which has prevailed for the past 35 years, by a new Federal policy which places total reliance for the disposition of employees' grievances growing out of the interpretation and application of collective agreements on the services of the National Railroad Adjustment Board. These decisions violate a rule repeatedly announced by this Court, that courts are not to promulgate Federal policy, but are to confine their functioning to ascertaining and enforcing the policy of the law as announced by the Congress.

ARGUMENT.

The Decisions Rendered by the Courts Below Defeat, and Will Bring to an End, the Congressional Policy of Requiring Carriers and Their Employees to Settle Grievances by the Collective Bargaining Process.

The question of Federal law decided by the courts below is whether railway employees, after the National Railroad Adjustment Board has issued an award in favor of an employee or employees and the carrier fails to make the award effective, may undertake to negotiate a settlement of the dispute with the carrier and use economic force in the effort to arrive at a satisfactory settlement.

L & N prefers to state this issue as involving the right of railway employees to engage in a strike "for the purpose of forcing a carrier to pay a money award" (p. 14, L & N brief opposing petition for certiorari). This method of stating the issue is preferred by L & N because it presents the issue in perhaps its least appealing form. Moreover, it enables L & N to use a sentence (out of context) from an opinion written by Mr. Justice Brandeis in the case of *Dorchy v. Kansas*, 272 U. S. 306 (1926), to convey the idea that concerted action by employees to induce an employer to pay to employees wages claimed to be due them is violative of some legal or moral principle. The sentence taken from the *Dorchy* opinion reads as follows:

"To enforce payment by a strike is clearly coercion."*

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* (P. 35, L & N brief in opposition to the petition for a writ of certiorari filed herein.) The case of *Dorchy v. Kansas* was not concerned with the question whether a strike to induce an employer to pay wages claimed to be due to the striking employees is lawful. The strike was not called because of any "trade dispute" existing between the company and its employees. Mr. Justice Brandeis explained:

(Continued on following page)

However, L & N has consistently urged that the instant case is governed by the same considerations which led to the decision reached in *D & RGW v. Bro. of R. T.*, 290 F. 2d 266. In the *D & RGW* case the Adjustment Board awards which the carrier declined to enforce covered a variety of disputes, with claims for money being largely subordinate to other issues.

The basic question posed by the instant case is the same whether the Adjustment Board award involves an unresolved grievance concerning the payment of money claimed to be due an employee, or the restoration of an employee to his job, or the proper interpretation or application of a rule of employment in a collective agreement to a particular situation.

Regardless of how the issue is stated, the basic question cannot be confused. The Adjustment Board having concluded its jurisdiction over a "minor dispute" by issuing an award in favor of an employee, and the carrier having failed to bring the dispute to an end by making

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(Continued from preceding page)

"There has been no controversy between the company and the union over wages, hours or conditions of labor; over discipline or the discharge of an employee; concerning the observance of rules, or over the employment of non-union labor. Nor was the strike ordered as a sympathetic one in aid of others engaged in any such controversy. The order was made and the strike was called to compel the company to pay a claim of one Mishmash for $180." (272 U. S. 306, at 309.)

Mishmash apparently ceased to be an employee before the strike was called. The question decided was not whether the strike called by Dorchy, a union leader, was for a lawful purpose. The question decided was whether a law enacted by the State of Kansas, which forbade strikes generally, was unconstitutional when applied to the facts of the *Dorchy* case, on the ground that the law was "a denial of the liberty guaranteed by the Fourteenth Amendment." The constitutionality of the law was sustained.

the award effective, the resulting question is, does the law forbid further collective bargaining efforts by the employees? Or does the law leave the employees in the position of having to choose between abandoning the grievance, or of undertaking the burden of litigating the grievance in the courts?

Petitioners brought this question to this Court for decision because of the fact that a basic change will be wrought in the law regulating employer-employee relations in the railway industry if the decisions rendered by the courts below become the established law in this industry. Petitioners believe that this change should not be allowed to crystallize without knowledge of this development being brought to the attention of this Court in a timely manner.

If the decisions rendered by the courts below stand, there will be an end to the collective bargaining process as a method of resolving employees' grievances of the kind commonly referred to (though often incorrectly) as "minor disputes." This will be true because the combined effect of recent court decisions is to outlaw the use by railway employees of their economic strength as an ingredient of the collective bargaining process in the settlement of grievances.

It is fair to say that the court decisions referred to did not develop by chance. They are the result of an adroit plan on the part of the railroads to erode away, through the exercise of the power of the judiciary, the invaluable right of railway employees to withhold their labor when necessary to achieve a satisfactory consideration of their grievances. This plan was brought to fruition by the decisions rendered by the courts below. And the plan is moving forward, with notable success, to destroy the right of

railway employees to strike in connection with so-called "major disputes" in the railway industry.*

The first serious assault launched in the courts by the carriers against the use by railway employees of their economic weapons in connection with negotiating the settlement of accumulated dockets of "minor disputes" occurred in the case of *Kansas City Terminal v. Manion*, 353 U. S. 927 (1957). This move followed a futile attempt in 1950 to secure passage of S. 3463, generally referred to as the Donnell Bill, by the Eighty-First

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* The resourcefulness of the carriers in discovering new bases upon which courts may predicate injunctive interference with the right of employees to strike over "major disputes" is illustrated by the following cases.

In *Chicago, Rock Island & Pacific RR. v. Switchmen's Union*, 187 F. Supp. 581 (1960), the carrier sought and obtained an injunction preventing its switchmen employees from engaging in a strike in the course of bargaining over a request for an increase in rates of pay. The carrier contended that the strike would violate the Railway Labor Act because the switchmen's representative merely went through the motions of collective bargaining before announcing that the switchmen intended to strike, and hence they had failed to "exert every reasonable effort to make and maintain agreements" as required by Section 2, First, of the Railway Labor Act. (45 U. S. C. Sec. 152, First.) (Findings of fact reversed, 292 F. 2d 61; petition for certiorari denied.)

In *Elgin, Joliet & Eastern Ry. Co. v. Brotherhood of Railroad Trainmen*, 196 F. Supp. 158 (1961), the carrier sought to enjoin its enginemen and trainmen employees from engaging in a strike after trying over a period of one and one-half years to negotiate a new pension agreement. A temporary injunction against the strike was issued, but was dissolved after a trial on the merits. The carrier appealed and the judgment rendered by the District Court was affirmed. The carrier based its claim to injunctive relief on the argument that if employees refuse to arbitrate a dispute when arbitration is proffered by the National Mediation Board, a strike based upon the dispute would violate the Railway Labor Act, because the employees failed to exert every reasonable effort to reach an agreement. The authority for this proposition is found, according to the *E. J. & E. Ry.*, in the decision by this Court in *Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co.*, 321 U. S. 50 (1943).

Congress. This Bill proposed amendments to the Railway Labor Act, strongly supported by representatives of the Association of American Railroads and officers of some of the major railroad systems, which would have taken from railway employees the right to strike over any kind of dispute or under any circumstance, and it would have authorized judicial review of Adjustment Board awards at the instance of the carriers whenever awards were rendered in favor of employees. The full Senate Committee on Labor and Public Welfare reported the Donnell Bill unfavorably (Report No. 2445). Violations by employees or their representatives of the Bill's prohibition against strikes were to have been crimes, punishable as misdemeanors. The law would have also authorized courts to issue injunctions, either prohibitory or mandatory in form, to prevent employees from leaving their employment contrary to the prohibitions of the law.

The explanations given by the carriers' principal spokesmen to the Senate committee during hearings held on the Donnell Bill regarding the existing state of the law, which permitted railway employees to engage in strikes over disputes, whether of the "minor" or the "major" category, and the changes that would have been made in the existing law by the provisions of the Donnell Bill, make interesting and instructive reading, particularly in light of the representations made by the carriers to the courts beginning with the *Kansas City Terminal* case and ending with the instant case, regarding the extent to which the Railway Labor Act forbids employees to engage in strikes. Probably the most eminent of the carriers' spokesmen was J. Carter Fort, Vice President and General Counsel to the Association of American Railroads. Mr. Fort described the existing right of railway employees to

strike in connection with the two principal classifications of labor-management disputes in the railway industry. Said Mr. Fort:

> "The present law provides no method or machinery for obtaining a binding decision as to disputes with respect to proposed changes in agreements covering wages and working conditions. This being so the present law does not undertake to prohibit strikes arising out of such disputes, except during a period when certain procedures, looking to possible voluntary settlement, are under way. As to disputes concerning the interpretation of agreements, the present law does afford an opportunity for employees to obtain final and enforceable decisions through the machinery of the National Adjustment Board set up under the provisions of the amendments of 1934. *However, the law does not require that employees take such disputes to the Adjustment Board or abide by the decisions of the Board. And it does not forbid strikes in connection with disputes falling within the jurisdiction of the Adjustment Board, and there have been many strikes of that kind.*" (Emphasis ours.) (p. 13, Hearings before Subcommittee on Railway Labor Act Amendments of the Committee on Labor and Public Welfare, United States Senate, Eighty-First Congress, Second Session, on S. 3463.)

Clearly, Mr. Fort was laboring (mistakenly, according to L & N) under the impression that the Congress, when enacting the 1934 amendments to the Railway Labor Act had *not* taken from railway employees the right to strike over grievances of the kind over which the Adjustment Board has jurisdiction.

At page 49 of the report on the Senate Committee's hearings, Harry A. DeButts, Executive Vice President of the Southern Railway Company, confirmed Mr. Fort's

views regarding the effect of the existing law and the purpose of the Donnell Bill:

> "As previous witnesses have testified, the railroads of the United States have been very hesitant and reluctant to ask the Congress to implement the Railway Labor Act by provisions of compulsion which would enforce what amounts to compulsory arbitration or legal procedures binding on both parties to a dispute and which would render strikes illegal. * * *
>
> "We think the time has now arrived when it is necessary in the public interest to write compulsion into the law.
>
> "As I understand S. 3463, it proposes compulsory and binding legal process for the settlement of the two classes of disputes: First, disputes concerning the interpretation and application of existing agreements, to be settled by final and binding awards of the National Railroad Adjustment Board, subject to judicial review by either party, with the judgment, in turn, of the courts to be final and binding; second, disputes as to changes in agreements covering wages, rules, and working conditions, to be settled by awards of Presidential boards, if not otherwise settled by prior procedures, the awards of such boards to be final and binding on both parties to the dispute, subject to very limited court review, which itself will be final and binding.
>
> "Accordingly, this bill would furnish clear and definite legal procedures whereby the parties to any dispute can achieve a binding settlement by due process of law. With these remedies given to the parties, and particularly to the employees, the bill would then render unlawful any strike or lock-out arising out of or in connection with any such dispute. We do not see any escape from the conclusion that such strikes or lock-outs, necessarily disastrous to the public interest, must be made illegal and subject to injunction. *We think that binding legal procedures for settle-*

ment of disputes in this essential industry must be substituted for the right to strike against the public interest."

Manifestly, Vice President DeButts did not have the understanding, which L & N now professes, that compulsory arbitration of disputes and the outlawing of strikes over grievances of the kind that are subject to the jurisdiction of the Adjustment Board were accomplished some sixteen years earlier, by the enactment of the 1934 amendments to the Railway Labor Act.

Returning to the subject of the *Kansas City Terminal* litigation, that suit was instituted on March 26, 1954. The object of the suit was to prevent employees of the Kansas City Terminal Railroad from leaving their employment in a strike. The strike was precipitated by the Terminal's refusal to settle on acceptable terms some 2,000 claims for overtime pay based upon persistent demands by the Terminal that switching crews work overtime, contrary, the employees believed, to an agreement by the Terminal that crews would not be requested to work overtime after completing a day's work, except in cases of emergency. The threatened strike was unlawful, the Terminal asserted, for the reason that Congress intended to forbid strikes over grievances growing out of interpretations and applications of collective agreements when it established the National Railroad Adjustment Board with authority to decide disputes of this nature. The courts of Missouri readily granted, and affirmed, an injunction forbidding the strike on the strength of the Terminal's thesis.

A second suit based upon the same thesis was instituted on July 16, 1954, by the Chicago River & Indiana Railroad and 27 other Class I railroads against the craft of trainmen employed by C. R. & I. R. The only material distinction between the facts and legal issues in the *Chicago*

River case and the *Kansas City Terminal* case is that in the former the disputes had been submitted by the employer to the Adjustment Board *before* the employees decided to engage in a strike. The dispute in the *Terminal* case was not submitted by either party to the Adjustment Board. A permanent injunction forbidding the strike was granted in the *Chicago River* case, and affirmed by this Court (353 U. S. 30). But in affirming the injunction, this Court, these petitioners believe, did *not* affirm the thesis advanced by the plaintiff carriers, which was to the effect that Congress intended to forbid employees engaging in strikes growing out of so-called "minor disputes."

These petitioners recognize that this Court's affirmation of the injunction issued in the *Chicago River* case was necessitated by the circumstances that a strike engaged in while the dispute was pending before the Adjustment Board would generally have the effect of defeating the clearly expressed intention on the part of Congress that either party to a dispute of this character shall have the right to submit such dispute to the Adjustment Board and have it decided, without let or hindrance from the other party to the dispute.

But the decision in the *Chicago River* case does have an unfortunate effect on the collective bargaining process. Of course the submission removes the dispute from an active status for a period of several years because of the congested docket of the First Division of the Adjustment Board.* Manifestly, a carrier has little incentive to make concessions to settle a dispute when the threat of economic pressure has been removed almost beyond the horizon, plus the fact that the dispute may ultimately be decided by the Adjustment Board in favor of the carrier.

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* Table 9, page 87, Twenty-seventh Annual Report of the National Mediation Board for the fiscal year ended June 30, 1961.

The subsequent granting of the petition for certiorari by this Court in the *Kansas City Terminal* case and the simultaneous ruling that the judgment entered by the Kansas City Court of Appeals had to be vacated, fortifies petitioners' conclusion that in affirming the issuance of the injunction in the *Chicago River* case this Court did not subscribe to the thesis upon which the plaintiff-carriers based their plea for an injunction in the *Chicago River* case.

As stated before, the practical effect of the decision in the *Chicago River* case is to remove from the mind of management all apprehension that it may be required to cope with the threat of a strike caused by employee discontent over the refusal of management to satisfactorily settle "minor disputes" before they are submitted to the Adjustment Board. A threat to strike during this period has, of course, no real substance, because the only effect that a threat to strike can have is to cause management to submit the grievance or grievances involved in the dispute to the Adjustment Board.

Notwithstanding this effect of the decision in the *Chicago River* case on settlement negotiations during the period *prior* to the submission of the dispute to the Adjustment Board, and notwithstanding the years of waiting that ensue when disputes are submitted to the First Division of the Board, there remained *one opportunity* to engage in forceful bargaining with the carrier if the Adjustment Board sustained the employees' grievance and the carrier declined to make the award effective.

This essential opportunity on the part of the employees' representative to ultimately bring to the bargaining table economic forces which could not fail to cause management to at least give serious consideration to the employees' grievances is, of course, now lost, if the decisions rendered by the courts below stand.

If these decisions stand, and a grievance is sustained by the Adjustment Board's award, the effort on behalf of the employee to secure a satisfactory disposition of the grievance may have only seriously started with the issuance of the award. For if management was satisfied at the inception of the dispute that its interpretation, or its method of enforcement, of the working rule was proper, or that the discipline or discharge of an employee was justified, management may elect to disregard the award and adhere to its original position in the dispute, and in so doing the carrier commits no wrong. The carrier is doing only what it has a clear right to do. This the petitioners would not change even if they had the means to accomplish it. Railway labor wants no part of a compulsory arbitration process.

The propriety of the carrier's assuming this attitude has been, to our knowledge, the subject of judicial comment in one case. This was in *Washington Terminal Co. v. Boswell*, 124 F. 2d 235 (1941), in which the opinion for the majority of the judges was written by Judge Rutledge, and the decision by the Court of Appeals for the District of Columbia was affirmed by this Court by an equally divided vote by the members of this Court (319 U. S. 732). The Washington Terminal Company contended that an award in favor of an employee is prejudicial to the carrier's position, legally speaking, and hence the carrier should have the opportunity to institute suit to obtain a judicial review of the award. This contention was overruled on the strength of the following reasoning:

> "The only purpose of such a suit would be to set aside or nullify the award. But this is not necessary for adequate protection of the carrier's rights. *The award is not self-enforcing or enforceable by the Board. It is merely a decision that the carrier should*

change its operating practice in the manner specified. It has the power of managment and if it regards the award as contrary to its rights it can maintain the existing practices. * * *

"* * * *The carrier is at full liberty to accept and comply with the award, or to reject and disregard it. If it chooses the latter course, the award has no effect upon its rights unless the employee institutes and succeeds in a suit to enforce it.* If he does so, the carrier receives full constitutional protection in the suit.

"A further argument remains. It is that unless the carrier can maintain such a suit as this, the employees will elect not to institute enforcement suits, but to rely upon their economic bargaining power, that is, the right to strike, to secure enforcement or acceptance of awards. Thus, it is said, the carrier will be deprived of its day of defense, and so of its only day in court. It is urged that the court should look at the facts of industrial and railroad life and determine the effects of the statutory provisions for suit in their light. If that is done, the further fact cannot be ignored that carriers, as well as labor unions and employees, have economic bargaining power. They are not entirely defenseless in the fact of threat of strike. Nor are railroad strikes so easily and readily called and put in effect that they are everyday occurrences. Employees, as well as employers, have a stake in avoiding them. And there is elaborate provision in Section 2 of the Act for meeting the contingency of a strike." (124 F. 2d 235, at 246.) (Emphasis ours.)

Thus the decisions and judgments rendered by the courts below have the effect of outlawing the use by railway employees of their economic strength in connection with attempts to settle grievances *throughout the entire range of the grievance adjustment process.* If a grievance is sustained by the Adjustment Board and the carrier does

not make the award effective, the employee is left with what amounts to a Hobson's choice, for he must either abandon the grievance which led to the dispute, or he must resort to litigation in the Federal courts as the only remaining available means of having his grievance satisfactorily disposed of.*

Neither prospect holds any appeal for employees, for reasons which were adequately explained by George M. Harrison, President of the Brotherhood of Railway and Steamship Clerks, when he appeared before a Senate subcommittee during hearings on the Donnell Bill. This explanation is reproduced, in part, at pages 62 to 73 of the separate Appendix. We particularly invite the Court's attention to the colloquy between Mr. Harrison and Senator Donnell regarding the attitude of railway employees toward the prospect of engaging in litigation in the courts as the prevailing means of achieving settlement of their griev-

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* The courts have held with virtual uniformity that in judicial proceedings instituted pursuant to Section 3, First (p), Adjustment Board awards are not to be confused with arbitration awards, and that courts may set aside the findings of the Adjustment Board when they are inconsistent with the evidence presented to the court in the enforcement proceedings. *Thomas v. New York, Chicago and St. Louis Railroad Co.*, 185 F. 2d 614 (1950); *Bro. of Railway and Steamship Clerks, etc., v. Atlantic Coast Line Railroad Co.*, 253 F. 2d 753 (1958). In the latter case, Chief Judge Parker emphasized the distinction between arbitration awards and Adjustment Board awards by saying:

> "If it had been intended, as appellant argues, that the orders of the Board rendered pursuant to 45 U. S. C. 153 should have the effect of awards of arbitrators, some such provisions as are contained in 45 U. S. C. 158 and 159 which relate to arbitration under 45 U. S. C. 157, would have been provided for their enforcement. The fact that an entirely different provision was made for the enforcement of Board orders under Section 153 from that made for enforcement of arbitration awards entered under the existing statute relating to arbitration is a matter which cannot be ignored and which shows clearly that Congress did not intend Board orders to have the effect of arbitration awards." (253 F. 2d 753, at 757.)

ances. This will be found at pages 69 to 73 of the separate Appendix.

Of course, the immediate and major effect of the decisions rendered by the courts below is to bring to an end the collective bargaining process as an effective instrument for the settlement of "minor disputes" in the railway industry. Without the presence of available and usable economic weapons in connection with the collective bargaining process, the latter can amount to no more than a form of supplication.

The petitioners believe this to be a consequence which this Court will fully appreciate. This Court stated as much in the *Chicago River* case when it said:

> "The Norris-LaGuardia Act, on the other hand, was designed primarily to protect working men in the exercise of organized, economic power, *which is vital to collective bargaining.*" (353 U. S. 30, at 40.) (Emphasis ours.)

And in *National Labor Relations Board v. Insurance Agents' Int. Union*, 361 U. S. 477 (1959), this Court provided a classical disquisition on the relationship between the collective bargaining process and the possession of effective economic power by the bargaining parties:

> "The presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized. Abstract logical analysis might find inconsistency between the command of the statute to negotiate toward an agreement in good faith and the legitimacy of the use of economic weapons, frequently having the most serious effect upon individual workers and productive enterprises, to induce one party to come to the terms desired by the other. But the truth of the matter is that at the present statutory stage of our national labor

relations policy, the two factors—necessity for good faith bargaining between parties, and the availability of economic pressure devices to each to make the other party incline to agree on one's terms—exist side by side. One writer recognizes this by describing economic force as 'a prime motive power for agreements in free collective bargaining.' Doubtless one factor influences the other; there may be less need to apply economic pressure if the areas of controversy have been defined through discussion; and at the same time, negotiation positions are apt to be weak or strong in accordance with the degree of economic power the parties possess." (361 U. S. 477, at 489.)

In *N. L. R. B. v. Katz*, 369 U. S. 736, at 741 (1962), this Court again affirmed the vital interrelationship between the process of negotiating agreements and the possession and use by employees of economic weapons.

We come then to the ultimate problem with which this Court must concern itself in the instant case. Petitioners brought this problem here because upon this Court, more than any other tribunal within the government of this Nation, the people of this country depend for the preservation of the basic institutions of our government, for the continuation of vitality in the Constitutional guarantees of individual freedom and liberties, and for protection against these institutions and personal rights being eroded away and lost to the Nation through the unwarranted exercise of power by persons or institutions within the government under the guise of performing a legitimate governmental function.

Petitioners submit that the instant litigation presents a case in point. The decisions rendered by the lower courts bring to an end the achievement of the national labor policy which the Congress has deemed essential in an industry considered vital to the national welfare. This na-

tional labor policy had its inception with the enactment of the original Railway Labor Act in 1926, when the Congress declared in Section 2, Second, of that Act that henceforth carriers and their employees must undertake, as a firm legal duty, the collective bargaining process as the basic instrument by which to achieve industrial peace. Section 2, Second, of the original Act reads as follows:

> "All disputes between a carrier and its employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute." (p. 64, attached Appendix.)

The goal of the Federal labor policy was recently stated by this Court in *Local 24, International Brotherhood of Teamsters, etc. v. Oliver*, 358 U. S. 283 (1959), as follows:

> "The goal of federal labor policy, as expressed in the Wagner and Taft-Hartley Acts, *is the promotion of collective bargaining; to* encourage the employer and the representative of the employees to establish, *through collective negotiation*, their own charter for the ordering of industrial relations and thereby to minimize industrial strife." (Emphasis ours.) (358 U. S. 283, at 295.)

Probably the most recent statement by this Court of this national policy was made in the case of *Charles Dowd Box Company v. Courtney*, 368 U. S. 502 (1962), where this Court said:

> "The Labor-Management Relations Act of 1947 represented a far-reaching and many-faceted legislative effort to promote the achievement of industrial peace through encouragement and refinement of *the collective bargaining process.*" (368 U. S. 502, at 509.) (Emphasis ours.)

This Court has also declared that the national policy and the basic principles which underlie the Railway Labor Act, also underlie the National Labor Relations Act and the Labor-Management Relations Act of 1947. *NLRB v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, at 33 (1936); *H. J. Heinz Co. v. NLRB*, 311 U. S. 514, at 524 (1940).

This goal of the Federal labor policy will no longer be achieved in the arena of "minor disputes" in the railway industry if the decisions rendered by the courts below stand. The collective bargaining process will cease to be a method of resolving differences between employers and employees in the field of "minor disputes," and such disposition of grievances as may be accomplished in the future will depend on the success of a process which has sometimes been referred to as a "compulsory arbitration" process but which in fact lacks the very few merits attributable to a statutory system of compulsory arbitration.

This will be the first time, of which petitioners are aware, that either a true or a specious system of compulsory arbitration has been imposed upon employers and employees by a government within these United States as a routine method for the settlement of employees' grievances. One attempt to impose this system on employers and employees was made by the State of Kansas in 1920. The law enacted by the Kansas legislature outlawed strikes of all kinds and substituted compulsory arbitration as the process to be used in settling all employer-employee disputes, including employees' demands for increased wages. The law permitted a laborer dissatisfied with his wages to quit his job, but forbade one employee to combine with others, or attempt to persuade others, to quit their employment in a strike.

This Court, speaking through Mr. Justice Taft, in the case of *Chas. Wolff Packing Co. v. Court of Industrial Relations of the State of Kansas*, 262 U. S. 522 (1923), disposed of this venture into government-imposed arbitration in a decisive manner. This Court stated that the right of employers and employees to establish the elements of their relationship by contract is a "part of the liberty of the individual protected by the guaranty of the due process clause of the Fourteenth Amendment." In further explanation of the reason for condemning the Kansas attempt at compulsory arbitration, this Court stated:

> "It has never been supposed, since the adoption of the Constitution, that the business of the butcher, or the baker, the tailor, the wood chopper, the mining operator or the miner was clothed with such a public interest that the price of his product or his wages could be fixed by State regulation. It is true that in the days of the early common law an omnipotent Parliament did regulate prices and wages as it chose, and occasionally a Colonial legislature sought to exercise the same power; but nowdays one does not devote one's property or business to the public use or clothe it with a public interest merely because one makes commodities for, and sells to, the public in the common callings of which those above mentioned are instances. * * *
>
> "If, as, in effect, contended by counsel for the State, the common callings are clothed with a public interest by a mere legislative declaration, which necessarily authorizes full and comprehensive regulation within legislative discretion, there must be a revolution in the relation of government to general business. This will be running the public interest argument into the ground, to use a phrase of Mr. Justice Bradley when characterizing a similarly extreme contention. *Civil Rights Cases*, 109 U. S. 3, 24." (262 U. S. 522, at 537 and 538.)

Counsel for the State of Kansas, as a precedent for the Kansas law, pointed to an Act of Congress adopted in 1916 for the purpose of coping with a specific crisis caused by a threatened nation-wide strike of railway employees. The threatened strike resulted from a dispute over the employees' request for an eight-hour day and a wage raise to off-set the loss of pay that would result from the shortened day. Congress by its act decreed the establishment of an eight-hour day by all railroads, and also ordered a temporary adjustment of the wage level while the parties pursued their negotiations. This interference by Congress with contracts of employment betweeen carriers and their employees, undertaken in the face of what appeared to be an imminent, nation-wide stoppage of interstate commerce, was held by this Court to be, under these extreme circumstances, a valid exercise of the power of Congress to regulate interstate commerce, in the case of *Wilson v. New*, 243 U. S. 332 (1917). But in the *Wolff Packing Company* case, this Court referred to the Congressional enactment in 1916 in this tenor:

> "It is not too much to say that the ruling in *Wilson v. New* went to the border line, although it concerned an interstate common carrier in the presence of a nation-wide emergency and the possibility of great disaster." (262 U. S. 522, at 544.)

As previously stated, the decisions rendered by the courts below bring to an end the collective bargaining process in the field of "minor disputes" in the railway industry, by outlawing the right of employees to employ their organized strength as an ingredient in the collective bargaining process. In lieu of the collective bargaining process, the employees are left with the Adjustment Board process for the disposition of grievances, a process which

has been inaccurately dubbed "compulsory arbitration." This has been accomplished at the instance of railroad managements and by the acquiescence of eight Federal judges, comprising two District Courts and two Courts of Appeals. It has been accomplished without so much as an intimation on the part of the courts that the decisions rendered involve other than routine matters. These decisions scuttle, in the field of "minor disputes" in the railway industry, a Congressionally-established labor policy based upon a philosophy that employees and their employers have the freedom to establish by negotiation "their own charter for the ordering of industrial relations." * This will be replaced by a policy that can be reconciled only with the thesis that employer and employee relations are to be controlled, in the last analysis, by government decree.

What the petitioners are unable to fathom about the decisions rendered by the courts below is that there are railroad managements and there are Federal judges who fail to recognize the strong probability that they are initiating in the industrial relations of this country a first, but fatal, step in a direction from which there is rarely a turning back.

If the compulsory arbitration of employees' grievances in the area of "minor disputes" becomes an established institution, and the public mind becomes reconciled and acclimatized to this heretofore alien process of resolving employees' grievances through the use of governmental power, the natural and inevitable development will be that this "easy" solution to employer-employee conflicts will be extended to the area of "major disputes" in the railway

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* *Local 24, International Teamsters, etc. v. Oliver*, 358 U. S. 283, at 295.

industry. Following this accomplishment, it will be but a short and near-inevitable step to extend the same process to all industry.

And when the procedure becomes established that government does decree, either directly or through the subterfuge of the compulsory arbitration process, the amount of wages that the Nation's workers shall receive for their services, then the owners and managements of the tools of production and the sources of industrial services cannot claim to be astonished when they discover that the establishment of *prices* by government fiat for the products and services of industry, as well as wages and working conditions, has become the established pattern of life in these United States. And the next proposition that cannot fail to command the attention of the law makers will be, how far behind the regulation of wages and prices by government should there follow the institution of government ownership of the tools of production and services?

For those who are inclined to dispute the conclusion that the major significance of the decisions rendered by the courts below lies in the fact that they represent a first decisive step *away* from the principles and institutions which in the past have distinguished this Nation from most of the other Nations of the world, or that there is present at the moment of this writing persons in positions of power who are ready and seemingly eager to see established in this country a system of governmental regimentation and control of persons and industries, a glance at certain bills now pending before the Congress will reveal that the prognostications here made may not only be expected to follow in due time in the wake of the lower courts' decisions—they are actually foreshadowed by legislation now proposed for enactment by the Congress.

For example, S. 3442, introduced July 2, 1962, by Senator Wayne Morse of Oregon, proposes amending the Labor-Management Relations Act of 1947 and the Railway Labor Act by authorizing the President to appoint emergency boards, without limitation as to the number or qualifications of their personnel, whenever the President is of the opinion that a national emergency exists or is threatened, as a result of a labor dispute of any kind in any industry which affects national health, safety or security. Such board will be empowered to investigate the dispute and make its report and its recommendations for settlement of the dispute to the President. In the meantime, the President will have the authority to order the Attorney General to petition a Federal district court to enjoin any strike that may be in effect, and order the employees to return to their jobs.

The emergency board is authorized to hold hearings at which the parties to the dispute "shall have an opportunity to be present," and to present such evidence "as the emergency board shall deem relevant to the issue or issues in the controversy."

The emergency board is required to submit its report to the President within 30 days after appointment, and the President may then transmit a report to Congress, accompanied by a proposal that the emergency board proceed to decide the dispute, or that the Government take possession of the business involved in the dispute and operate the same.

The Bill further provides that should the Congress fail within ten days after receiving the President's proposal to adopt a resolution *disapproving* the President's proposal, the President may then order the emergency board to proceed to decide the dispute, and its decision will be binding upon the parties for one year. To assure that the parties will abide by the board's decision, the President

may instruct the Attorney General to petition a Federal district court to issue appropriate injunctions and restraining orders directed to the parties.

On the other hand, the President may consider that the appropriate remedy is for the government to take possession of the business enterprise involved in the dispute and operate it until such time "as may be consistent with the recommendations of the emergency board or as may be authorized by the President." The Bill also provides for the disposition of such income as may be earned by the business while it is being operated by the Government. The owners are to receive from such income their "just compensation," after the expenses incurred by the Government in operating the business are deducted, and any remaining income is to belong to the Treasury of the United States.

Another bill, S. 114, containing substantially the same proposals as S. 3442, was introduced on February 28, 1961, by Senator Jacob K. Javits of the State of New York.

There is indeed need for concern over the fact that bills are now pending before the Congress which propose vesting in the President power to dictate the terms and conditions of employment of all persons employed in all industries affecting commerce to an extent probably not exceeded by any foreign dictator. *But more than this, there is reason for alarm over the fact that there are now men in high places in the Federal government who are capable of thinking and believing in terms of abandoning the principles and traditions upon which this Nation was founded, and converting the government of this Nation into a totalitarian power.*

Such considerations, among others, require a reversal of the judgment rendered by the court below in the instant case.

The Legislative History of the Railway Labor Act Does Not Support the Carrier's Contention in This Litigation.

In the brief filed by L & N with this Court opposing the petition for certiorari filed by petitioners, the subject discussed at pages 28 to 34 of the brief is preceded by the following title:

> "The Decisions of the District Court and the Court of Appeals Are Supported by Legislative History and Contemporary Understanding of the Railway Labor Act."

The brief contains quotations found in this legislative history from statements made by Commissioner Joseph B. Eastman, by Mr. Carmalt, Legal Adviser to Commissioner Eastman, and by Mr. George Harrison, President of the Brotherhood of Railway and Steamship Clerks. These statements are offered as indications that their authors understood and believed that the 1934 amendments to the Railway Labor Act, while establishing the National Railroad Adjustment Board with authority to decide disputes growing out of the interpretation and application of collective agreements, would at the same time forbid employees to engage in strikes over such disputes after they had become the subject of awards by the Adjustment Board.

The statements quoted disclose, the L & N brief says, that the 1934 amendments were intended to authorize courts to issue injunctions prohibiting employees from engaging in strikes after disputes have been decided by the Adjustment Board.

We agree that the statements quoted do perhaps indicate an understanding that is in line with L & N's contention in this litigation. There are in fact other equally convincing statements to the same effect to be found in the legislative record. For example, Mr. M. W. Clement was the principal spokesman for the Class I railroads of the country in the hearings held by the Senate Committee on

Interstate Commerce on the proposed amendments to the Railway Labor Act in 1934. In Mr. Clement's lengthy explanation to the members of the Committee on the effect of the proposed amendments, this statement appears:

> "Men and management are agreed that what they want is compulsory, prompt, and equitable settlement of disputes." (p. 67, Hearings before Senate Committee on S. 3266, Seventy-third Cong., Second Session.)

But it is also possible for *petitioners* to extract equally emphatic statements from the context of the legislative history supporting the conclusion that the sponsors of the Railway Labor Act and its amendments had the understanding that the Act would *not* take from railway employees their existing rights to engage in concerted action in seeking the settlement of grievances and other causes of disputes.

Manifestly, there is but one means by which this Court can acquire a reasonably accurate knowledge of the understanding that was held by the proponents of the original Railway Labor Act and of the 1934 amendments to the Act regarding the extent to which the Act and its amendments would deprive railway employees of their existing right to use their economic strength. This method is to review *all* of the statements made by the proponents of the Act on the anticipated effect of the new laws on the subject of employees' right to strike under a given set of circumstances, and the consequences that were expected to flow from the establishment of the National Railroad Adjustment Board, plus the opportunity made available to employees to seek the enforcement of Adjustment Board awards in the Federal courts.

This method we have undertaken to follow. The legislative record is presented for the convenience of the Court

in a separate Appendix to this brief. This record is the result of a conscientious search of the hearings held by the Congressional committees, of the majority and minority reports by these committees to the Congress, and of the debates on the floors of both Houses of Congress. Everything that could be found in these records bearing directly upon the effect of these laws on the right of employees to engage in strikes in connection with the settlement of grievances has been incorporated into this Appendix, regardless of whether the opinions expressed favor one conclusion or another. A summary of the more significant disclosures revealed by this record will be presented here.

We suppose no one will dispute the fact that at the time of the enactment of the original Railway Labor Act in 1926, the existing Federal law enacted by Congress imposed no restrictions on the right of railway employees to withdraw from their employment when dissatisfied with their working conditions or with relations between them and their employer.

A second fact that is equally free of serious dispute is that the original Railway Labor Act did *not* take from railway employees the right to strike over grievances, whatever the cause of the grievance might be.

The legislative record pertaining to the original Railway Labor Act discloses that the bill which was enacted into law was introduced after it had been approved by railroad managements and by the representatives of railway employees. Representatives of management and of the employees were agreed that the 1926 Act was intended to establish procedure and machinery to aid in the settlement of disputes of all kinds, *but the new law was not to deprive employees of their existing right to resort to strike action, save for one exception.* The exception is found in the emergency board provision of the Act (Section 10). It

forbids the parties involved in a dispute which threatens to interrupt the flow of interstate commerce to change "the conditions out of which the dispute arose" while an emergency board is investigating the dispute, and for 30 days after the board has submitted its report to the President (p. 68, attached Appendix).

The statements in which this understanding between representatives of management and employees is explained are reproduced at pages 5 to 13 of the separate Appendix. These statements are not disputed in the legislative record, and they must surely dispel any doubt that might exist regarding the understanding shared by the proponents of the 1926 Act that the Act was *not* to take from railway employees the right to strike in connection with either "major disputes" or "minor disputes," including disputes left undisposed of after they had become the subject of awards rendered by boards of adjustment established pursuant to Section 3 of the Act (p. 65, attached Appendix).

A statement which leaves nothing to doubt on this subject was made by Mr. A. P. Thom, general counsel to the Association of American Railroads, to the Senate Committee on Interstate Commerce while hearings were being held on the Watson-Parker Bill, which became the Railway Labor Act of 1926. It is as follows:

> "Now there are certain things that labor is very much opposed to. There are certain things that they do not want to write in a bill. It is a part of the principles of their organization. They do not want to write an anti-strike clause in a bill. They regard that as fundamental with them. They are willing to say, 'we will pursue every step in this case before there is a strike. But we will not consent to an anti-strike clause.' And the conclusion of the railroad executives

is that the time has not come in the public interest when it is necessary to press down that crown of thorns upon labor's brow." (pp. 15-17, Hearings by Senate Committee on Interstate Commerce on S. 2306, Sixty-Ninth Congress, First Session.)

Before leaving the 1926 Act, we point out that Section 3 of that Act authorized a carrier and the representatives of its employees to enter into agreements creating boards of adjustment to decide disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." The Act provided that parties were to include in their agreement when establishing a board the provision that "decisions of adjustment boards shall be *final and binding* on both parties to the dispute; and it shall be the duty of both to abide by such decisions."

Section 3 of the Act did not contain a provision authorizing employees to undertake the enforcement of decisions rendered by boards of adjustment by instituting actions in the Federal courts against their employer (p. 65, attached Appendix).

We now turn to the legislative record pertaining to the 1934 amendments to the Railway Labor Act. This record, to the extent that it throws light on the subject under consideration, will be found at pages 13 to 61 of the separate Appendix.

The 1934 amendments grew out of three bills introduced in the Seventy-Third Congress. One was Senate Bill 3266, introduced by Senator Dill. The other bills, which differed only in detail from S. 3266, were H. R. 7650, introduced by Congressman Sam Rayburn, and H. R. 9689, introduced by Congressman Robert Crosser. The initial fact emphasized by the proponents of these measures was that *they did not propose a departure from the basic prin-*

ciples upon which the 1926 Act was based. Of this fact, Federal Coordinator Joseph B. Eastman stated:

> "This Railway Labor Act has now been tried for a period of 8 years. It has served a very useful purpose and has brought about many good results, but experience has shown that it is in need of improvements. The bill before you, S. 3266, proposes such improvements. *It does not depart from the general principles of the present Railway Labor Act,* but instead is designed to reinforce those principles and provide for their more effective application. It seeks not to overturn but to perfect what has been done." (p. 10, Hearings before Comm. on Interstate Commerce, 73d Cong., 2d Session.) (Emphasis ours.)

George M. Harrison, chairman of the legislative committee of the Railway Labor Executives' Association, appeared before the Senate Committee in support of S. 3266 and made this statement regarding the intended effect of the 1934 amendments:

> *"The bill is designed to maintain substantially the same method as is now provided in the railway labor act for the adjustment of labor relations between the railroads and their employees.* Our experiences, however, after 8 years of operation under that bill have brought us to the definite conclusion that, while its principles are sound, there is need of some amendments to clarify the language and to prevent certain unfair practices that have developed over that period of time." (p. 28, Hearings before Senate Committee.) (Emphasis ours.)

Mr. Crosser prepared the majority report for the House Committee, recommending, with minor exceptions, passage of H. R. 9861. Speaking of the general purpose of the 1934 amendments, the report speaks as follows:

> *"The bill does not introduce any new principles into the existing Railway Labor Act,* but it is designed to

> amend that act in order to correct the defects which have become evident as a result of 8 years of experience. It does not change the methods of conference, mediation, and voluntary arbitration to settle major disputes over wages and working conditions, which are provided in the Railway Labor Act of 1926, now in effect." (p. 2, House Report No. 1944.) (Emphasis ours.)

Since the principal proponents of the 1934 amendments were agreed that the amendments did *not* "introduce *any new principles* into the existing Railway Labor Act," the question naturally arises, how is it possible for the respondent in the instant case to consistently contend that the 1934 amendments outlawed strikes by railway employees over grievances of all kinds, and that in lieu of the right to strike Congress established the National Railroad Adjustment Board and authorized enforcement proceedings in the Federal courts in the manner prescribed by Section 3, First (p), of the Act. Respondent contends this administrative procedure and the enforcement proceedings are the exclusive means by which "minor disputes" may be resolved in the railway industry pursuant to the terms of the Railway Labor Act.

The 1934 amendments carried over from the 1926 Act the temporary prohibition against employees striking while an emergency board, appointed pursuant to Section 10, investigates a dispute and submits its report to the President, plus 30 days thereafter. The act as amended in 1934 contains no new language which expressly, or by clear implication, forbids employees to employ their economic weapons when seeking the settlement of disputes of any character or at any time.

The 1934 amendments made two principal changes in the 1926 Act, only one of which is germane here. These were explained at length by the proponents of the amend-

ments. The more important of these two changes was designed to overcome two deficiencies that inhered in the original plan for the establishment of boards of adjustment to resolve grievances growing out of the interpretation and application of collective agreements. (See Section 3 of the 1926 Act at p. 65, attached Appendix.) The 1926 Act provided that boards of adjustment were to be brought into being by agreements between a carrier and its employees or between a group of carriers and their employees. The boards were to be composed of an equal number of representatives appointed by the carrier and by the employees.

Time and experience soon demonstrated that agreements establishing the boards more often than not failed to materialize. And when agreement was arrived at establishing a board, the members of the board found themselves all too frequently deadlocked in trying to decide a dispute. The 1926 Act prescribed no method for overcoming this stalemate.

The representatives of labor and of management who participated in Congressional hearings on the 1934 amendments were not in total agreement on the remedies for these two defects. The employees' representatives proposed the establishment of one adjustment board having jurisdiction on a national scale, with authority to entertain and decide disputes when submitted by a party to a dispute, without consent or cooperation from the other party. Also, deadlocks between carrier-members and employee-members on the new Board were to be overcome by the National Mediation Board's appointing referees to sit with the members of the Board, assuming the members of the Board could not agree on the selection of a referee.

The carriers' representatives, on the other hand, opposed the establishment of an adjustment board having

nation-wide jurisdiction, preferring instead that the amendments provide for the establishment of system boards or craft boards of adjustment, and that a means of overcoming deadlocks among the members of the boards be a part of the amendments (pp. 25 to 31, separate Appendix).

The representatives of labor hoped to achieve two objectives by the establishment of one national board, with doors that would be open at all times to receive submissions of disputes from any employee or carrier involved in a dispute. The two objectives were explained by one of labor's chief spokesmen, George M. Harrison. Mr. Harrison's explanation of what the employees' representatives hoped to accomplish by the establishment of one national board having nation-wide jurisdiction will be found at pages 16 to 23, and pages 31 to 34, of the separate Appendix.

The first objective was, of course, to establish by law one centrally located adjustment board with country-wide jurisdiction, whose functioning did not depend upon any form of consent, cooperation, or acquiescence from the carriers. This would overcome one of the basic defects in the 1926 Act, resulting from the assumption that carriers and their employees would readily agree to the establishment of local boards of adjustment.

The second objective was to create a situation, by the establishment of one national board, which would cause the carriers to be anxious to agree to the establishment of system or regional boards of adjustment, an arrangement actually preferred by railway employees. Since the carriers' representatives were opposed to having one national board, far removed from the local scene and unacquainted with conditions peculiar to any particular railroad system, deciding grievances submitted by the carrier's employees,

the employees' representatives anticipated that the establishment of one national board would cause railroad managements to readily agree to the establishment of system and regional boards of adjustment.

Such boards of adjustment would not be governed by the procedural and judicial enforcement provisions contained in Section 3, First, of the Act, applicable to the National Adjustment Board and its awards. The procedure that would be employed by the system or regional boards, the finality of their decisions, the circumstances under which their decisions would be subject to enforcement in the courts, the extent, if any, to which courts would have the right to inquire into the merits of their decisions, and all similar matters, were left by the amendments to be determined by the agreements establishing the boards.

To achieve this objective, it was, of course, necessary for the amended Act to authorize carriers and their employees to establish system or regional boards of adjustment and to permit these boards to be used in lieu of the National Adjustment Board to settle grievances. This is why the 1934 amendments proposed by the employees' representatives included Section 3, Second, as a part of the new law. (p. 77, attached Appendix.)

These objectives were explained by Mr. Harrison. This explanation appears at pages 21 to 23 and pages 59 and 60 of the separate Appendix.

Had the expectations of labor's representatives materialized, the probability is there would have been no occasion for the instant litigation to develop.

It was in the course of this explanation by Mr. Harrison to the Senate Committee that the expression "*compulsory determination* of their controversies," was used, and which has since been lifted from its context and put forward as an admission on the part of the employees'

representatives that they understood and approved the prospect of a *new Congressional policy* for promoting peaceful labor relations in the railway industry. This policy, it is said, contemplated the surrender by railway employees of the right to employ their economic strength when seeking settlements of their grievances. It is said that employees' representatives were prepared to have Congress outlaw the use of economic weapons, and thereafter that area of employees' grievances sometimes referred to as "minor disputes" would be disposed of by a system of "compulsory arbitration."

It is simply implausible for one to acquire this understanding of what Mr. Harrison meant if one examines his full explanation to the Congressional committees as to what labor sought to accomplish by the amendments proposed in 1934 to Section 3 of the 1926 Act. The fact is made perfectly clear by Mr. Harrison's testimony that the maximum change desired by railway employees in the settlement procedure established by the 1926 Act was the establishment of one National Adjustment Board to which disputes could be submitted by either party, and that its power to decide disputes could not be thwarted by a deadlock among the Board's regular members. Of course there was hope that the Adjustment Board's decisions would command sufficient respect from the disputants that they would be accorded a "final and binding" effect by the disputants.

Coming now to discussions and comments dealing specifically with the right of railway employees to employ their economic strength in seeking the settlement of disputes, there was one proponent of the 1934 amendments who doubtless had more influence than any other in persuading the committees of the House and Senate to approve the bills that ultimately became the 1934 amend-

ments to the Railway Labor Act. This man was Federal Coordinator of Transportation, Joseph B. Eastman. Near the conclusion of the hearings before the House Committee on Interstate and Foreign Commerce (73rd Congress, 2d Session, on H.R. 7650), Congressman Pettengill put to Commissioner Eastman a question regarding the effect that the establishment of the National Railroad Adjustment Board would have on the existing right of railway employees to strike over grievances of the kind which the Adjustment Board would have jurisdiction to decide. This question was *not* concerned with the right of employees to engage in strikes over grievances which had *not* been submitted by either party to the Adjustment Board, nor was it concerned with strikes over grievances during the period that grievances were pending before the Adjustment Board awaiting decision, nor was it concerned with strikes over grievances which had been decided by the Adjustment Board favorably to the employee but which the carrier had not made effective.

So far as the legislative record discloses the contemporary understanding of those responsible for the enactment of the 1934 amendments, the right of employees to strike under any one of these three clearly defined situations *was not discussed at any time* in the course of the hearings held by the committees of either branch of the Congress, nor was this right discussed while the bills were being debated on the floors of the House and Senate.

Whether the provisions in the 1934 amendments would curtail the existing right of employees to strike under *any* circumstance, was discussed on only one occasion, so far as the legislative record discloses. Congressman Pettengill referred to the language in Section 3, First (m), of the Act, which states that awards rendered by the National Railroad Adjustment Board shall be "final and

binding," except insofar as they shall contain money awards. The specific question put by the Congressman to Commissioner Eastman was as follows:

> "Mr. Pettengill: Mr. Chairman, may I ask a question?
>
> "The Chairman: Mr. Pettengill.
>
> "Mr. Pettengill: Mr. Eastman, at the bottom of page 17, it says that the award shall be final and binding upon both parties to the dispute, excepting insofar as they shall contain a money award.
>
> "Is it your interpretation that that language, by implication or argument, would make a strike unlawful?"

The discussion that ensued is reproduced at pages 38 and 39 of the separate Appendix. We especially invite the Court to review carefully this discussion, and also the discussion which followed after Congressmen Wolverton and Cooper entered the colloquy.

Congressman Pettengill's initial question, the record discloses, was concerned with whether the proposed amendments were understood to forbid employees to strike over a dispute *after it had been submitted to the Adjustment Board and the Board's award decided the dispute against the employee*. Commissioner Eastman answered Congressman Pettengill by simply saying that the "final and binding" provision contained in the 1926 Act would be retained in the 1934 amendments. Congressman Pettengill then stated that "we all" indulge the hope that train service will not be interrupted by strikes, but, the Congressman continued:

> "* * * I am not prepared to go (so) far as to say that labor shall, by law, be required to abandon that ancient weapon which has been recognized by the United States Supreme Court over and over again." (P. 40, separate Appendix.)

Congressmen Wolverton and Cooper then pressed the question whether the employees would be violating the amendments to the Act "if they do not comply with the decree and the order that is made (by the Adjustment Board)." Commissioner Eastman replied by saying:

"It says that the award shall be final and binding."

Congressman Wolverton continued:

"Is there any provision in this bill that would enable the court to obtain an injunction against a labor organization which is dissatisfied with the final decree and refuses to comply with it?"

Commissioner Eastman answered:

"Well I am not able to give you an answer to that. That is a legal question, to be frank with you, that I have not gone into." (P. 45, separate Appendix.)

After more discussion on the question whether the amendments would permit employees to strike after a decision adverse to the employee was issued by the Adjustment Board, Commissioner Eastman stated:

"Now, the only question I am in doubt about is whether or not there should be an injunction under this act to prevent a strike. Now I am not clear about that."

Congressman Wolverton continued to press for a clear understanding of what the language in the proposed amendments should provide in the event employees chose to disregard an adverse award and resort to a strike.

"Mr. Wolverton: Do you think that there should be such a provision in the bill?

"Commissioner Eastman: I would rather see it carried out without that, because I do not believe you are going to have that question arise.

"Mr. Wolverton: Do you consider it better policy to leave it out—

"Commissioner Eastman: Well, no particular question has been raised about this matter of enforcement." (P. 46, separate Appendix.)

Commissioner Eastman thus made perfectly clear his belief that railway employees and carriers operating under the amended law would doubtless consider grievances as having been brought to an end by Adjustment Board awards rendered adversely to the employees. Yet the Commissioner frankly acknowledged that he had not theretofore given any consideration to the question whether the language contained in the bills then pending before Congress did in fact authorize courts to issue injunctions forbidding employees to strike in the event they undertook to do so following receipt of an adverse decision from the Adjustment Board.

Commissioner Eastman also expressed clearly his personal preference that the amendments be adopted *without containing language authorizing courts to enjoin strikes over disputes after they have been decided by the Adjustment Board against the employees* (p. 46, separate Appendix).

Congressman Wolverton continued to insist that there must be no misunderstanding as to whether the language of the proposed amendments was intended to authorize the issuance of injunctions to prevent employees from striking over disputes after the disputes had been decided against the employees by the Adjustment Board. Commissioner Eastman suggested in reply that his legal adviser, Mr. Carmalt, should be questioned on the subject:

"Mr. Wolverton: Let us first have a frank understanding as to whether it is included or is not included in the bill and then we can determine the policy as to whether it should be or should not be in the bill; but it certainly seems to me that the bill ought

not to be left indefinite either from the standpoint of the carriers or the standpoint of the employees. We should know just what the situation is.

"Commissioner Eastman: I think I would prefer that my legal adviser, Mr. Carmalt, who has been working on this bill for me, be asked that question. If you will ask him what he thinks about that.

"Mr. Carmalt: It seems to me at least arguable that a strike might be enjoined under the provisions of this law, that is to say, a strike called because of failure to comply with an adverse decision of the judgment of the Board in favor of the carriers against the employees." (P. 47, separate Appendix.)

Before this colloquy ended, Mr. Carmalt became completely equivocal. He stated that he believed employees should not have the right to strike after receiving adverse Adjustment Board awards. He believed the language of the amendments could be interpreted as authorizing a court to issue an injunction to prevent employees striking for this purpose. But then he concluded his testimony by saying that the language of the amendments did not in fact go that far. The conversation ended on this note:

"Mr. Wolverton: So then you assume that under the provisions of this bill an injunction could issue to prevent an organization from going on strike?

"Mr. Carmalt: Such an injunction process as might be necessary to prevent the strike growing out of the settlement of grievances under section 3, I should believe would lie.

"Mr. Wolverton: Then the bill has been drawn purposely so that it would have that effect, so far as the organization is concerned but not so far as the individual is concerned?

"Mr. Carmalt: *I would not say that it gives any authority in that regard*, because it was assumed that would be true, I think, but there has been no dis-

cussion of it until this morning." (P. 51, separate Appendix).

The discussion of the right to strike was concluded by the following exchange:

"Commissioner Eastman: I may say, so far as I am concerned, it had not seemed to me that matter was a contingency of importance, because I cannot conceive of organizations striking over the settlement of grievances, particularly when they had been passed upon by an impartial tribunal under Government auspices.

"It is a serious enough thing to strike when a major matter is involved; but when you have only minor grievances and they have had full opportunity to be heard and have had their day in court before a tribunal, it hardly seemed to me that that was a question that was likely to arise. *My own idea would be, let that question arise out of experience and find out whether there is actual need for any such power before you provide for issuing injunctions for preventing strikes.*

"Mr. Wolverton: Mr. Commissioner, that may be true. Maybe that is a proper course to pursue, but what I am seeking to find out is whether this language declares something else to be the policy.

"Commissioner Eastman: Yes.

"Mr. Wolverton: And I am endeavoring to find out just what that language of this bill does provide, so that we may know what policy we are adopting. It may be that a hands-off policy is what we should adopt, but in that case, I do not want to see something in the bill that carries a different effect. That is the purpose of my questions, in trying to find out definitely what is the purpose or effect of the provisions in the bill.

"Commissioner Eastman: I shall be glad to give the matter study and let you know just what my opinion is upon it" (pp. 51-52, separate Appendix).

While the upshot of Mr. Carmalt's discussion was a firmly expressed opinion that employees should not have the right to disregard adverse Adjustment Board awards by resorting to strikes to overcome such awards, he was also in agreement with Commissioner Eastman that the bills pending before Congress had not been drafted with the intent of specifically forbidding a strike under this condition, or of authorizing the use of court injunctions to prevent such strikes. Commissioner Eastman was of the opinion that Congress should await the lessons of experience before going so far as to authorize the issuance of injunctions to prevent strikes to overcome adverse Adjustment Board awards.

On the basis of an exhaustive review of the legislative history which preceded the enactment of the 1926 Railway Labor Act and also the 1934 amendments to the Acts, certain significant conclusions may be confidently drawn:

(1) The 1926 Railway Labor Act, according to the *carriers'* principal spokesmen, was not intended to outlaw the existing right of railway employees to employ their economic strength in connection with efforts to settle disputes of any kind that might arise between carriers and their employees, with the single exception that a strike should not be called while an emergency board functions pursuant to Section 10 of the Act, plus 30 days thereafter.

The plan for the establishment of boards of adjustment by agreements between carriers and their employees was an attempt to provide administrative machinery that would, it was hoped, be an effective and acceptable substitute by employees for the use of their economic powers in connection with negotiating settlements of "minor disputes."

(2) The 1934 amendments were not intended to alter *the basic principles upon which the 1926 Act was premised.* (Pp. 13-29, separate Appendix.) The chief spokesmen for the carriers urged that there be only minor tinkering with the 1926 Act. Mr. M. W. Clement summarized management's desires by saying:

> "* * * all that is necessary is to change section 3 of the present law and make certain modifications in Section 5.
>
> "If this course is adopted, I cannot help but feel that you will assure men complete freedom of action in all ways, for collective bargaining, equitable settlement of disputes, and assure the country against any interruption to commerce or to operation of the carriers." (pp. 29-30, separate Appendix.)

Banning the right of employees to use their economic strength when negotiating settlements of grievances, and substituting for this method the Adjustment Board process, to be followed by a transfer of grievances to the courts when carriers declined to make Adjustment Board awards effective, would surely be recognized by any knowledgeable person, either in the year 1934, or today, as a substantial departure from the "general principles" embodied in the 1926 Act.

(3) At no time, according to the legislative record, did any of the proponents of the 1934 Amendments, or the Congressional committees that considered those amendments, or the House or Senate, engage in a specific discussion regarding the effect of the proposed amendments on the right of railway employees to pursue the settlement of grievances by collective bargaining and resort to strike action

after a grievance had been made the subject of an Adjustment Board award in favor of an employee but remained undisposed of by reason of the carrier's failure to make the award effective.

Such discussion as did take place regarding the effect of the amendments on the right of employees to resort to strike action was confined to one situation. This situation would arise only if employees were to disregard decisions rendered by the Adjustment Board that were adverse to the employees and they were to undertake to persuade the carrier to settle the dispute in a manner satisfactory to the employees in spite of the Board's adverse decision.

One cannot follow the discussion of this question by Commission Eastman and his legal adviser with the members of the Congressional committees without discovering that the possibility that employees would resort to strikes to overcome adverse decisions rendered by the Adjustment Board had not even occurred to Commissioner Eastman or his legal adviser prior to the discussion before the committees. Also, Commissioner Eastman expressed clearly his judgment that he was opposed to the inclusion of language in the amendments which would authorize courts to enjoin strikes undertaken in defiance of Adjustment Board awards.

In short, the legislative history is completely negative relative to the contention urged by the respondent L & N, that the members of Congress understood and intended that the 1934 amendments would prohibit employees resorting to strike action when the purpose of the strike was to persuade carriers to satisfy grievances after they had been decided by the Adjustment Board *favorably to the employees* but were not made effective by the carrier.

> The only expression found in the legislative record of a belief that the 1934 amendments would supplant the existing right of railway employees to employ their economic strength in seeking the settlement of grievances by establishing a compulsory arbitration process is contained in a written statement sent to Congressman Sam Rayburn by an officer of the Teamsters' Brotherhood and incorporated in the record without comment. This opinion was prompted by the fact that the amendments to Section 3 provided that Adjustment Board awards shall be "final and binding." Aside from the fact that the Teamsters' Brotherhood does not function subject to the Railway Labor Act, it is sufficient to say that not even the respondent to the instant suit attaches to the words "final and binding" the significance attributed to them by the author of the statement from the Teamsters' Brotherhood (pp. 36-37, separate Appendix).

There is not a whit of support in the legislative record of the 1934 amendments for believing that those persons who proposed the enactment of the amendments, or the members of Congress who approved the amendments, understood or thought that the amendments represented a departure from the "slow" and "piecemeal" approach which Congress had been making over a period of several decades to the task of promoting peaceful relations between carriers and their employees. *General Committee of Adjustment, etc. v. Missouri-Kansas-Texas R. Co.*, 320 U. S. 323, at 332 (1943).

There is no language to be found in the Act forbidding a strike or declaring that if a carrier declines to make an Adjustment Board award effective, the only remedy available to the employee is to resort to the courts for a trial *de novo* under Section 3, First (m), of the Act. Obviously,

if this had been the intent of Congress, this result could easily have been spelled out as one of the amendments to Section 3 of the Act.

So the question to be decided by this Court reduces itself to the propriety of the lower courts' use of judicial power to promulgate a policy governing the disposition of "minor disputes" throughout the railway industry—a *policy which Congress clearly did not declare*, or, we may say, *which Congress refrained from declaring*.

This Court, when deciding the case of *Local 1976, United Brotherhood of Carpenters and Joiners, etc., v. NLRB*, 357 U. S. 93 (1958), laid down a rule of statutory construction which we believe applicable to the instant case. This rule the lower courts did not observe, but should have heeded. One question before this Court in the *Carpenters'* case was whether the Taft-Hartley Act should be interpreted as forbidding all forms of secondary boycott. This Court stated that the Act should not be so construed, that the Act was "the result of conflict and compromise between strong contending forces and deeply held views on the role of organized labor in the free economic life of the Nation and the appropriate balance to be struck between the uncontrolled power of management and labor to further their respective interests."

This background, this Court said, "counsels wariness in finding by construction a broad policy against secondary boycotts," when, "from the words of the statute itself, it is clear that those interested in just such a condemnation were unable to secure its embodiment in enacted law."

The Court then epitomized this rule of statutory construction by saying:

> "The problem raised by these cases affords a striking illustration of the importance of the truism that it is the business of Congress to declare policy and not this

Court's. The judicial function is confined to applying what Congress has enacted after ascertaining what it is that Congress has enacted." (357 U. S. 93, at 99.)

In the case of *NLRB v. Drivers, Chauffeurs, etc. Local Union No. 639*, 362 U. S. 274, at 289 (1962), this Court repeated the same rule of statutory construction and the same warning against courts finding a broad prohibition in a statute when Congress consciously refrained from including such prohibition in the enacted law.

The 1934 amendments to the Railway Labor Act probably did not spring from a background "of conflict and compromise between strong contending forces and deeply held views" comparable to the background from which the Taft-Hartley Act emerged. Nevertheless, when the legislative history and the language of an enacted law disclose with reasonable certainty that the Congress did not intend to adopt a particular policy, as is true in the instant case, for a court then to establish this policy in the course of "interpreting" the law is surely another "striking illustration" of a Court exceeding the limits of "the judicial function."

We further suggest that the decisions rendered by the courts below are inconsistent with the interpretation of the Railway Labor Act made by this Court in the *Kansas City Terminal* case. As stated in an earlier part of this brief, the ruling in that case must be understood to be a *rejection* of the carrier's thesis that the Congress intended to outlaw the use by railway employees of economic weapons in the course of settling "minor disputes." Judge Rutledge spoke accurately, we believe, when he stated in the *Washington Terminal* case that the administrative and judicial processes made available to employees by the Railway Labor Act for the disposition of "minor disputes" were established or authorized by Congress, "*not to out-*

law the right to strike, but merely to prevent the necessity for its exercise." (124 F. 2d 235, at 247.)

The lower courts have failed to recognize that there is a clear distinction between a Congressional policy which achieves "peaceful" labor relations by the method of suppressing the right of employees to use their economic strength, and a policy which achieves peaceful labor relations by minimizing the *need* to employ economic strength through providing acceptable and effective methods and machinery for the settlement of grievances. The lower courts have mistaken the former policy for the latter.

This misconception is further confirmed by the faulty reasoning employed by the lower courts in arriving at the conclusion that a strike, launched in an effort to persuade a carrier to satisfy a grievance after it has become the subject of an award in favor of the employees, must be considered to be an unlawful strike because it *"would defeat the essential purposes of the Railway Act."* We quote from the decision rendered by the District Court in *Denver & Rio Grande Western R. R. Co. v. Bro. of Railroad Trainmen*, which provided the basis for the decisions rendered by the lower courts in the instant case: *

> "To hold that the procedures for decision are exclusive and that the procedure for enforcement is not exclusive would be inconsistent with the purposes of the Act. The injury to the public is the same whether the interruption of interstate commerce is for the purpose of obtaining a decision or for the purpose of enforcing a decision. *To permit the interruption of service for the purpose of enforcing a decision of the Adjustment Board*, when the Act itself provides a remedy for such enforcement, *would defeat the es-*

* (R. 98a, 151a and 311.)

sential purposes of the Act." (185 F. Supp. 369, at 372 (1960).) (Emphasis ours.)

If the proper test of the lawfulness of a strike is to be whether the strike "*would defeat the essential purposes of the Act*"—the essential purpose being to prevent "the interruption of interstate commerce"—then manifestly *every strike* by railway employees is an unlawful strike and should be enjoined, according to this thinking.

We submit that the lower courts erred in thus using the premise which they chose as the basis for their reasoning and conclusion.

We further suggest that there is no parallel between the special consideration which existed in the *Chicago River* case, to wit, the manifest intention on the part of Congress that *carriers*, as well as employees, shall have the unqualified right to have disputes over grievances decided by the Adjustment Board, which consideration caused this Court to affirm the injunction issued in the *Chicago River* case, and the circumstances of the instant case. The decision by L & N employees in the instant case to resort to strike action could not have the effect of defeating an important statutory right vested in the L & N by the Railway Labor Act. Neither would it prevent the functioning of any agency or tribunal under the Act upon which a large responsibility for achieving the ultimate purposes of the Act rests.

The truth of the matter is that when an award favorable to employees is not made effective by the carrier, and the employees find it necessary to resort to the use of economic force to achieve settlement of the grievance, it is the carrier that is properly chargeable with thwarting the purposes of the Railway Labor Act. This is not to say that in thus thwarting the purpose of the Act, the carrier is violating a law.

We conclude this portion of the brief with a reminder that the dispute which led to the threatened strike by the employees represented by these petitioners is a dispute which clearly falls within the definition of "labor dispute" as this term is defined and used in the Norris-LaGuardia Act (29 U. S. C. Sec. 113). And the issuance of the injunction by the District Court below ignores the limitation imposed on the jurisdiction of that Court by the language of the Norris-LaGuardia Act. Section 1 of the Act states this limitation in sweeping terms:

> "Issuance of restraining orders and injunctions: limitations; public policy. No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter." (29 U. S. C. Sec. 101.)

One reading for the first time the language of the Norris-LaGuardia Act would, of a certainty, come to the conclusion that the instant case grew out of a "labor dispute," and that the District Court exceeded its jurisdiction when it issued a permanent injunction against the petitioners and the employees they represent.

The fabric of the Norris-LaGuardia Act has been shredded by so many exceptions and qualifications in the course of the many judicial interpretations made of the Act, that to discover what remains of this Act and to argue its applicability to the circumstances of the instant case would require an unwarranted lengthening of this brief.

However, the Act does continue to be a part of the law of the land, and it does serve, on occasion, the purpose

which Congress sought to achieve by its enactment, as in the cases of *Brotherhood of Railroad Trainmen v. Toledo, Peoria & W. R. R.*, 321 U. S. 50 (1943), *Order of Railroad Telegraphers v. Chicago and Northwestern Railway*, 362 U. S. 330 (1960), and the very recent decision by this Court in the case of *Sinclair Refining Company v. Atkinson*, 370 U. S. 238 (1961).

CONCLUSION.

Petitioners pray that the judgment entered by the Court of Appeals for the Sixth Circuit be reversed, and that a judgment be entered dismissing the cause and assessing costs against respondents.

Respectfully submitted,

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Printed August 22, 1962.

APPENDIX.

1926 Railway Labor Act.

[PUBLIC—No. 257—69TH CONGRESS]
[H. R. 9463]

An Act To provide for the prompt disposition of disputes between carriers and their employees, and for other purposes.

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DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this Act:

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GENERAL DUTIES

SEC. 2. First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier and its employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or

unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.

Fourth. In case of a dispute between a carrier and its employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the railroad line of the carrier involved unless otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this paragraph shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Fifth. Disputes concerning changes in rates of pay, rules, or working conditions shall be dealt with as provided in section 6 and in other provisions of this Act relating thereto.

BOARDS OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

SEC. 3. First. Boards of adjustment shall be created by agreement between any carrier or group of carriers, or the carriers as a whole, and its or their employees.

The agreement—

(a) Shall be in writing;

(b) Shall state the group or groups of employees covered by such adjustment board;

(c) Shall provide that disputes between an employee or group of employees and a carrier, growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, that the dispute shall be referred to the designated adjustment board by the parties, or by either party, with a full statement of the facts and all supporting data bearing upon the dispute;

(d) Shall provide that the parties may be heard either in person, by counsel, or by other representative, as they may respectively elect, and that adjustment boards shall hear and, if possible, decide promptly all disputes referred to them as provided in paragraph (c). Adjustment boards shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in the dispute;

(e) Shall stipulate that decisions of adjustment boards shall be final and binding on both parties to the dispute; and it shall be the duty of both to abide by such decisions;

(f) Shall state the number of representatives of the employees and the number of representatives of the carrier or carriers on the adjustment board, which number of representatives, respectively, shall be equal;

(g) Shall provide for the method of selecting members and filling vacancies;

(h) Shall provide for the portion of expenses to be assumed by the respective parties;

(i) Shall stipulate that a majority of the adjustment board members shall be competent to make an award, unless otherwise mutually agreed;

(j) Shall stipulate that adjustment boards shall meet regularly at such times and places as designated; and

(k) Shall provide for the method of advising the employees and carrier or carriers of the decisions of the board.

Second. Nothing in this Act shall be construed to prohibit an individual carrier and its employees from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish.

Board of Mediation

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Procedure in Changing Rates of Pay, Rules, and Working Conditions

Sec. 6. Carriers and the representatives of the employees shall give at least thirty days' written notice of an intended change affecting rates of pay, rules, or working conditions, and the time and place for conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. Should changes be requested from more than one class or associated classes at approximately the same time, this date for the conference shall be understood to apply only to the first conference for each class; it being the intent that subsequent conferences in respect to each request shall be held in the order

of its receipt and shall follow each other wth reasonable promptness. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Board of Mediation have been requested by either party, or said board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 5 of this Act, by the Board of Mediation, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Board of Mediation.

ARBITRATION

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Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

EMERGENCY BOARD

SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Board of Mediation, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Board of Mediation shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be com-

posed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

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Railway Labor Act (As Approved June 21, 1934; Public No. 442, 73rd Congress).

(U. S. Code, Title 45, Chapter 8, Sec. 151, et seq.)

DEFINITIONS

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SEC. 2. Section 2 of the Railway Labor Act is amended to read as follows:

"GENERAL PURPOSES

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid

any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"GENERAL DUTIES

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives

of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

[3] "Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided,* That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free

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[3] Amended by Public Law 914, 81st Cong. (see sec. 2 eleventh).

transportation to its employees while engaged in the business of a labor organization.

[3] "Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided,* (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further,* That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

"Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate

who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

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SEC. 3. Section 3 of the Railway Labor Act is amended to read as follows:

"NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES INTERPRETATION OF AGREEMENTS

"SEC. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

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"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Ad-

justment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district

court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

"(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

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"Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other

party elect to come under the jurisdiction of the Adjustment Board."

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SEC. 6. Section 6 of the Railway Labor Act is amended to read as follows:

"SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

ARBITRATION

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Eighth. Nothing in this Act shall be a construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

EMERGENCY BOARD

SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board, and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

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Norris-LaGuardia Act

(29 U. S. C. Sections 101, 104, 113.)

Section 101. "No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter."

Section 104. "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts

involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title."

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Section 113. "When used in this chapter, and for the purposes of this chapter—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."